

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: November 20, 2007)

DO NOT PUBLISH

JAMES ROBERT DICKMAN,)	
as legal representative of the estate of his daughter,)	
LINDSAY KATHLEEN DICKMAN,)	
)	
Petitioner,)	
)	
v.)	No. 06-0199V
)	Attorneys' Fees; Attorneys' Costs
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS' FEES AND ATTORNEYS' COSTS¹

Petitioner, James R. Dickman (Mr. Dickman), as legal representative of the estate of his daughter, Lindsay K. Dickman (Lindsay), seeks an award of \$23,883.65 in attorneys' fees and attorneys' costs for an action that he pursued under the National Vaccine Injury Compensation Program (Program).² *See* Joint Status Report (JSR), filed October 12, 2007. The parties represent that respondent does not object. *See* JSR. According to the parties, Mr. Dickman did not incur "personal expenses in prosecuting this claim." JSR at 1. But, the parties recognize that Mr. Dickman did not proffer the statement required by General Order No. 9. *See* JSR.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

On November 6, 2007, the special master directed Mr. Dickman to file by no later than November 14, 2007, the statement required by General Order No. 9. *See Dickman v. Secretary of HHS*, No. 06-0199V, Order of the Special Master (Fed. Cl. Spec. Mstr. Nov. 6, 2007). The special master stated that he did not contemplate an enlargement of time within which to comply with his November 6, 2007 order. *See Dickman v. Secretary of HHS*, No. 06-0199V, Order of the Special Master (Fed. Cl. Spec. Mstr. Nov. 6, 2007). Rather, the special master provided clearly that if Mr. Dickman did not file by November 6, 2007, the statement required by General Order No. 9, the special master would issue a decision on attorneys' fees and attorneys' costs foreclosing Mr. Dickman from asserting any claim to personal expenses as defined by General Order No. 9. *See Dickman v. Secretary of HHS*, No. 06-0199V, Order of the Special Master (Fed. Cl. Spec. Mstr. Nov. 6, 2007).

On November 16, 2007, Mr. Dickman filed a status report. *See* Status Report VI, filed November 16, 2007. Mr. Dickman's attorney of record, Stephanie O'Connor, Esq. (Ms. O'Connor), described her considerable efforts to obtain from Mr. Dickman the statement required by General Order No. 9. *See* Status Report VI, filed November 16, 2007. According to Ms. O'Connor, Mr. Dickman has not responded to numerous telephone messages. *See* Status Report VI, filed November 16, 2007. The special master is justified in concluding that Mr. Dickman does not wish to communicate with Ms. O'Connor. Therefore, the special master deems the case ripe for a decision on attorneys' fees and attorneys' costs.

Mr. Dickman did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of compensation to cover" Mr. Dickman's "reasonable attorneys' fees and other costs" as long as "the special master or court determines that" Mr. Dickman possessed "a reasonable basis for the claim" and that Mr. Dickman filed the petition "in good faith." § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master's "discretion is not without limit." *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent "special circumstances," the special master "should ordinarily" award attorneys' fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully the record as a whole. Based upon his experience, the special master determines that an award of \$23,883.65 in attorneys' fees and attorneys' costs is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Mr. Dickman's favor for \$23,883.65 in attorneys' fees and attorneys' costs. The judgment shall reflect that Mr. Dickman is foreclosed from lodging a claim for personal expenses as defined by General Order No. 9. In addition, the judgment shall reflect that Ms. O'Connor may collect \$23,883.65 from Mr. Dickman. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send Mr. Dickman's copy of this decision to Mr. Dickman by overnight express delivery.

John F. Edwards
Special Master